

# NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

## NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

#### CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

*Editor's Note: The following Notice of Supplemental Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 660.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 28, 2012.*

[R13-41]

#### PREAMBLE

- 1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified in R1-1-409(A). A list of any other related notices published in the *Register* to include those as specified in R1-1-409(A):**

Notice of Rulemaking Docket Opening: 18 A.A.R. 3263, December 14, 2012  
Notice of Proposed Rulemaking: 18 A.A.R. 3250, December 14, 2012  
Notice of Supplemental Proposed Rulemaking: 19 A.A.R. 46, January 11, 2013  
Notice of Emergency Rulemaking: 19 A.A.R. 150, February 1, 2013

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|--|---------------------------------|
| <b><u>2. Articles, Parts, or Sections Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| R3-2-202   | Amend                           |

- 3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 3-107(A)(1) and 3-1203(B)  
Implementing statute: A.R.S. §§ 3-2046, 3-2088 and 3-2161

- 4. The agency's contact person who can answer questions about the rulemaking:**

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- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The primary purpose of this rulemaking is to update the incorporated federal regulations in order to maintain at least equal to state status.

The applicable federal regulations in 9 CFR Chapter III have undergone 11 rulemakings since January 1, 2009. First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be

slaughtered for meat for human consumption. *See* 74 FR 11463-66 (March 18, 2009). Second, voluntary rules pertaining to inflating carcasses were amended. *See* 75 FR 69575-77 (November 15, 2010). Third, a voluntary nutritional labeling program for major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products has become mandatory. *See* 75 FR 82148-67 (December 29, 2010). Fourth, a voluntary program has been added that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. *See* 76 FR 24714-59 (May 2, 2011). Fifth, the time it takes an inspector to don and doff work clothes now counts toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. *See* 76 FR 33974-80 (June 10, 2011). Sixth, the time it takes an inspector to sharpen knives, complete administrative activities, and prepare the inspection station also now counts toward the inspector's 40 hour work week. *See* 77 FR 59291-94 (September 27, 2012). Seventh, the definitions for certain classes of poultry are set to change on January 1, 2014, to more accurately and clearly describe the characteristics of poultry in the market today. *See* 76 FR 68058-64 (November 3, 2011). Eighth, inspected facilities must now (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. *See* 77 FR 26929-37 (May 8, 2012). Ninth, section 392 has been added, which relates to petitions for federal rulemaking. This new federal section does not need to be part of this state rule, so the Department is adding this new federal section to the list of excluded sections in the rule. *See* 74 FR 16104-08 (April 9, 2009). The remaining two rulemakings made technical changes to the rules without changing the intended meaning. *See* 76 FR 81360 (December 28, 2011) and 76 FR 82077-79 (December 30, 2011).

This rulemaking also clarifies the scope of the rule. The rule pertains to the requirements of 9 CFR Chapter III. Currently, only meat and poultry inspection and slaughtering procedures are specifically mentioned. However, 9 CFR Chapter III actually covers inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation. The Department has interpreted the current general references to inspection and slaughtering as covering all of 9 CFR Chapter III, but this rulemaking will make the rule more specific for added clarity and to match the authority granted under A.R.S. §§ 3-2046, 3-2088(B) and 3-2161. For the same reason, the heading of Section R3-2-202 is being expanded to include processing. The Department believes listing inspection, slaughtering, and processing in the heading is sufficient and that listing inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation in the heading would be unnecessarily long.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. An explanation of the substantial change which resulted in the supplemental notice:**

This second supplemental notice now incorporates the requirements of 77 FR 59291-94 (September 27, 2012) to the rule. The purpose of the rulemaking is to update the reference to 9 CFR Chapter III from the 2009 version to the current regulations and incorporating the September 27, 2012, amendments is an important part of that effort. The changes incurred by the new inclusion of 77 FR 59291-94 (September 27, 2012) are summarized in item #5 of this preamble.

For convenience, this second supplemental notice refers to the recently published 2013 version of 9 CFR Chapter III rather than the 2012 version. The 2013 version of the CFR simply incorporates rule changes published in the Federal Register (FR) during 2012, which rule changes were already incorporated into the proposed rule with the exception of 77 FR 59291-94 (September 27, 2012) that is being added now as described in the paragraph above.

This supplemental notice also continues to make clear that the changes to 9 CFR Chapter III described in 76 FR 68058-64 are incorporated in this rulemaking. Although those changes were enacted prior to January 1, 2013, they have an effective date of January 1, 2014. Thus, it is unclear whether they form part of the January 1, 2013, version of the federal regulations or not. Accordingly, the federal regulation is now specifically mentioned in the amended state rule, though its provisions will not take effect until 2014 as specified in those federal regulations.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**9. The preliminary summary of the economic, small business, and consumer impact:**

As more fully described in item #5, the rulemaking makes eight substantive changes. None of these changes are expected to require any new full-time Department employees. Also, the Department is not able to offer any less intrusive alternatives and still be "at least equal to" federal law.

First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. The federal government estimated that in 2007 about 1,300 out of 33.7 million cattle nationwide became non-ambulatory disabled cattle after the antemortem slaughter inspection. The federal regulation being adopted by Arizona is designed to bring the nationwide figure of 1,300 down to 0. The purpose of this federal regulation is animal welfare. The federal government estimates that this change will cost the entire beef industry \$930,000 to \$1,370,000 annually, with \$883,000 to \$1,342,600 of that being born by smaller businesses. The

federal government also estimates that the annual value of the beef industry is \$8.4 billion. The federal government expects that the beef industry will eventually pass this cost on to consumers. *See* 74 FR 11463-66 (March 18, 2009).

Second, the rulemaking adopts federal amendments to voluntary rules pertaining to inflating carcasses. Because air inflation is voluntary, the federal government believes the federal rule will not have an economic impact. *See* 75 FR 69575-77 (November 15, 2010).

Third, the rulemaking adopts new federal requirements for nutritional labeling of major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products. The federal government tried a voluntary labeling program, but the federal government felt participation levels were too low. The federal government wants consumers to have precise information about fat content per serving so that consumers can make educated choices about consuming covered meat and poultry products. The federal requirements have several exemptions, including for small businesses with respect to labeling ground or chopped products. The federal government estimates the cost of labeling for major cuts to be \$0.0002 per pound and for ground and chopped products to be \$0.006 per pound or less. The federal government also estimates that the cost for retail stores that use point-of-purchase signs instead of product labels will be about \$1,537 annually (per store). *See* 75 FR 82148-67 (December 29, 2010).

Fourth, the rulemaking adopts a new federal voluntary program that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. Presently, no meat or poultry inspected at a state-inspected facility may be sold in interstate commerce. The federal government estimates that state agencies will need about 40 hours to complete the steps necessary to join the program and another 24 hours per establishment that wants to participate. The federal government also estimates that about 25% of the establishments that wish to participate will need to spend about 16 hours in updating recordkeeping procedures. Since this program is voluntary, businesses don't have to incur any new costs. *See* 76 FR 24714-59 (May 2, 2011).

Fifth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to don and doff work clothes as time counting toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. The state overtime fee is \$19.40 per hour or \$4.85 per 15 minutes. Over 260 work days per year, there would be an overtime charge of \$1,261 per inspector at state inspected facilities. In comparison, federal inspected facilities would pay \$4,462 per inspector per year in overtime. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of \$0.0001 per pound. Facilities have the option of operating 15 minutes less each day to avoid overtime charges, but the revenue generated during those extra 15 minutes exceeds the cost of the overtime. The federal regulation is intended to meet the requirements of federal labor law. *See* 76 FR 33974-80 (June 10, 2011).

Sixth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to sharpen knives, prepare the inspection station, and complete administrative activities as time counting toward the inspector's 40 hour work week. The federal government believes the daily time to prepare the inspection station and to complete administrative activities is about three minutes. Because inspectors track time in 15 minute increments, these three minutes are unlikely to create any additional charge. The federal government estimates that knife-sharpening takes 15 minutes and needs to be twice a week for inspectors working four days or more and once a week for inspectors working three days or less. The federal government notes that many facilities perform this service for inspectors, such that the inspectors do not need to spend time to sharpen knives. The federal government estimates the cost per inspector per year for knife sharpening to be \$1,776.30 for four days or more workers and \$888.20 for three days or less workers if the facility does not provide the service. Because the state charge is considerably less than the federal charge, the estimated state charges would be \$504.40 and \$252.20, respectively. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of less than \$0.0001 per pound. The federal regulation is intended to meet the requirements of federal labor law. *See* 77 FR 59291-94 (September 27, 2012).

Seventh, the rulemaking adopts federal amendments effective beginning January 1, 2014, that redefine certain classes of poultry to comport with current market conditions and for increased clarity, consistency and uniformity. The federal government believes these changes may have some economic benefit for the industry, but will not have a significant effect on poultry prices. The new definitions lower the age limit for five classes of poultry, which benefits suppliers who will be able to sell birds at younger ages. In addition, some chickens that are "broilers" now will become "roasters," which means they might be sold at a higher per-pound price. The classification changes will result in the need to change labels, but industry will probably be able to make those changes at the same time it is changing the labels to comply with other federal regulations. The federal government believes the changes will not have much effect on consumer demand. According to the federal government, because these changes "will not have a significant effect on the demand side and [are] not imposing additional cost to the suppliers, there will not be significant change in prices." *See* 76 FR 68058-64 (November 3, 2011).

Eighth, the rulemaking adopts new federal regulations that require inspected facilities to (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. The requirements to allow review and copying of records and to notify USDA-FSIS of adulterated or misbranded product will have a negligible economic impact. The requirements to create recall procedures and document reassessments of HACCP plans are estimated to cost the 6,300 federally-inspected establishments nationwide a total of between \$4.7 and \$5.7 million the first year and approximately \$687,000 annually over

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years two through ten. Of the 6,300 nationwide facilities, there are 2,856 very small facilities (under 10 employees or less than \$2.5 million in sales) and 3,044 small facilities (10-499 employees). *See* 77 FR 26929-37 (May 8, 2012).

**10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

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**11. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:**

A person may request an oral proceeding on the supplemental proposed rule by contacting the individual identified in item #4 within 30 days of publication of this notice.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Pursuant to A.R.S. § 3-104(F), the Department will discuss this rulemaking with the ADA Advisory Council prior to adopting the rule.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rule does not require a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

9 CFR Chapter III is applicable to this rule. This rule is not more stringent than the federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

Most of 9 CFR Chapter III, including 76 FR 68058-64 (November 3, 2011), is incorporated by reference in Section R3-2-202.

**14. The full text of the rule follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE  
ANIMAL SERVICES DIVISION**

**ARTICLE 2. MEAT AND POULTRY INSPECTION**

Section

R3-2-202. Meat and Poultry Inspection; Slaughtering and Processing Standards

**ARTICLE 2. MEAT AND POULTRY INSPECTION**

**R3-2-202. Meat and Poultry Inspection; Slaughtering and Processing Standards**

All meat and poultry ~~inspection and slaughtering procedures~~ inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, ~~2009~~, 2013 as amended by 76 FR 68058-64 (November 3, 2011), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7,

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329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed ~~at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html) or purchased from the U.S. Government Online Bookstore at [bookstore.gpo.gov](http://bookstore.gpo.gov).~~ online at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).